UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

DELTA COATINGS, LLC **Plaintiff** **VERSUS** **DONJON SHIPBUILDING AND REPAIR, LLC** **Defendant**	**CIVIL ACTION NO. 17-00363** **SECTION H(5)** **JUDGE JANE TRICHE MILAZZO** **MAGISTRATE MICHAEL NORTH**

MEMORANDUM IN SUPPORT OF DONJON SHIPBUILDING AND REPAIR, LLC's MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION, MOTION TO DISMISS FOR IMPROPER VENUE, OR ALTERNATIVELY MOTION TO TRANSFER VENUE

Defendant, Donjon Shipbuilding and Repair, LLC (hereinafter "DSR") files this Motion to Dismiss for Lack of Personal Jurisdiction, Motion to Dismiss for Improper Venue, or Alternatively Motion to Transfer Venue to the U.S. District Court for the Western District of Pennsylvania pursuant to Rules 12(b)(2) and 12(b)(3) of the Federal Rules of Civil Procedure and/or 28 U.S.C. § 1404(a), all as outlined below.

PROCEDURAL AND FACTUAL BACKGROUND

This case is in the early, pre-trial stages. Plaintiff, Delta Coatings, LLC ("Delta") filed this suit against DSR in the United States District Court for the Eastern District of Louisiana on or about January 13, 2017. Delta alleges that DSR breached a contract to provide marine services – specifically painting services – to be performed exclusively at DSR's shipyard in Erie, Pennsylvania.

This case does not belong in Louisiana. DSR is a nonresident defendant. DSR is a New Jersey limited liability company with its principal place of business located at 220 East Bayfront Parkway, Erie, Pennsylvania 16507. Declaration of John Witte, attached hereto as **Exhibit A**.

DSR has no offices, files no tax returns and is otherwise not registered to do business in Louisiana. *Id.* All of the services performed by Delta that relate to this action were performed exclusively in Erie, Pennsylvania. *Id.* In fact, other than an unsupported statement that "negotiations and/or execution of this contract took place in the State of Louisiana," which is denied, Plaintiff's complaint is entirely devoid of any assertions of a connection to the State of Louisiana. As detailed more fully below, DSR lacks the requisite minimum contacts with the State of Louisiana, and Plaintiff's single false assertion cannot serve as a basis for subjecting DSR to jurisdiction in this forum.

Alternatively, this case should be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(3), as DSR does not reside in this district, this claim did not arise within this district, and no property related to this claim is, or ever was, situated within this district. In the further alternative, this case should be transferred to the Western District of Pennsylvania pursuant to 28 U.S.C. § 1404(a), as supported by the private and public interest factors detailed herein.

ARGUMENT

I. PLAINTIFF CANNOT ESTABLISH PERSONAL JURISDICTION OVER DSR IN THIS COURT

When a foreign defendant moves to dismiss for lack of personal jurisdiction under Federal Rule of Civil Procedure 12(b)(2), "the party seeking to invoke the power of the court bears the burden of proving that jurisdiction exists." *Luv N' Care, Ltd. v. Insta-Mix, Inc.,* 438 F.3d 465, 469 (5th Cir. 2006). The plaintiff may bear its burden by presenting a *prima facie* case that personal jurisdiction is proper. *Id.* The Court must accept as true uncontroverted allegations in the plaintiff's complaint and must resolve factual conflicts in the plaintiffs favor, but need not credit conclusory allegations even if uncontroverted. *Panda Brandywine Corp. v. Potomac Elec. Power Co.,* 253 F.3d 865, 868-69 (5th Cir. 2001). Absent any dispute as to the relevant facts, the issue of whether personal jurisdiction may be exercised over a nonresident defendant is a question of law. *Ruston Gas Turbines, Inc. v. Donaldson Co., Inc.*, 9 F.3d 415, 418 (5th Cir. 1993).

The Court may exercise personal jurisdiction over a nonresident defendant only if two requirements are satisfied: (1) the forum state's long-arm statute confers personal jurisdiction; and (2) the exercise of jurisdiction comports with due process. *Seiferth v. Helicopteros Atuneros Inc.*, 472 F.3d 266, 270 (5th Cir. 2006). Because the limits of Louisiana's long–arm statute are co-extensive with the limits of constitutional due process, the two-part inquiry merges into one: whether the Court's exercise of jurisdiction over the defendant would offend due process. La. R.S. 13:3201(B) (providing that a Louisiana court "may exercise personal jurisdiction over a nonresident on any basis consistent with … the Constitution of the United States"); *Luv N' Care v. Insta-Mix, Inc.,* 438 F.3d 465, 469 (5th Cir. 2006); *Electrosource Inc. v. Horizon Battery Techs., Ltd,* 176 F.3d 867, 871 (5th Cir. 1999); *Sciortino, SR. v. CMG Capital Mgmt. Group, Inc.*, 2016 U.S. Dist. LEXIS 124710 (E.D. La. Sept. 14, 2016).

The exercise of personal jurisdiction can only be maintained if the nonresident defendant has purposefully availed itself of the benefits and protections of the forum state by establishing "minimum contacts" with the forum state, *see, e.g., Int'l Shoe Co. v. Washington,* 326 U.S. 310, 316 (1945), and if the exercise of jurisdiction over the nonresident defendant does not offend "traditional notions of fair play and substantial justice." *Asahi Metal Indus. Co. v. Superior Court,* 480 U.S. 102, 113 (1987). The Fifth Circuit has further held that mere foreseeability of a potential suit within a Louisiana forum does not create personal jurisdiction. *Moncrief Oil Intern. Inc. v. OAO Gazprom,* 481 F.3d 309, 313 (5th Cir. 2007). And both the Supreme Court and the Fifth Circuit have "consistently rejected attempts to satisfy the defendant-focused 'minimum contacts' inquiry by demonstrating contacts between the plaintiff and the forum State." *Walden v. Fiore*, 134 S. Ct. 1115, 1122 (2014); *Patterson v. Dietze, Inc.*, 764 F. 2d 1145, 1147 (5th Cir. 1985).

A. There is no basis for general personal jurisdiction over DSR.

General jurisdiction is appropriate only when the foreign defendant's acts within the forum are so continuous and systematic that the forum's exercise of jurisdiction over the defendant would not offend due process. *Helicopteros Nacionales de Colombia, S.A. v. Hall,* 466 U.S. 408, 414-19 (1984). As recently as 2014, the U.S. Supreme Court has held that general personal jurisdiction is ordinarily available only in the two places where a business is "at home" – the company's State of incorporation and its principal place of business, and that jurisdiction will only exist outside those two locations in "exceptional circumstances." *Daimler AG v. Bauman*, 134 S. Ct. 746, 749-50, 761 (2014). The Fifth Circuit has consistently held that in order to establish general jurisdiction, a plaintiff must show "extensive contacts between a defendant and a forum." *Submersible Sys., Inc. v. Perforadora Central S.A.*, 249 F.3d 413, 419 (5th Cir. 2001); *Johnston v. Multidata Sys., Int'l Corp.*, 523 F.3d 602, 609-10 (5th Cir. 2008); *Revell v. Lidov*, 317 F.3d 467, 471 (5th Cir. 2002).

DSR is a limited liability company registered in the State of New Jersey with its principal place of business in Erie, Pennsylvania. **Exhibit A**. Since its formation in 2009, DSR's facilities have been located on 44 acres along Lake Erie, operating more than 200,000 square feet of production area, including fabrication and assembly buildings, as well as 4,000 feet of pier space. The facility is utilized for ship building, repairs, conversions and other marine services.

DSR's marine services are performed exclusively at its facility in Erie, Pennsylvania. DSR is not registered to do business in the State of Louisiana and does not maintain a place of

business in Louisiana. **Exhibit A**. Further, DSR has never: 1) been licensed to conduct business in Louisiana; 2) owned property in Louisiana; 3) paid taxes in Louisiana; 4) maintained a bank account in Louisiana; or 5) sold materials or equipment in Louisiana. **Exhibit A**.

Plaintiff's Complaint acknowledges that DSR is incorporated in New Jersey (Complaint, at para. 2) and makes no assertion that DSR has its principal place, or any place, of business within this district. Additionally, Plaintiff's Complaint is entirely devoid of any allegations that DSR has the "wide spread" or "continuous and systematic contacts" with the State of Louisiana required for this Court to exercise personal jurisdiction over DSR. Accordingly, this Court lacks general personal jurisdiction over DSR.

B. There is no basis for specific personal jurisdiction over DSR.

In order to establish specific jurisdiction over a nonresident defendant, a plaintiff must show that: "(1) There are sufficient (i.e., not random fortuitous or attenuated) prelitigation connections between the nonresident defendant and the forum; (2) the connection has been purposefully established by the defendant; and (3) the plaintiff's cause of action arises out of or is related to the defendant's forum contacts." *Pervasive Software, Inc. v. Lexware GMBH & Co. KG,* 688 F.3d 214, 221 (5th Cir. 2012) (citations omitted); *ITL Int'l, Inc. v. Constenla, S.A.*, 669 F.3d 493, 500 (5th Cir. 2012). Furthermore, even if the plaintiff makes this *prima facie* showing, the defendant can still defeat the exercise of specific jurisdiction by demonstrating "that it would fail the fairness test, i.e., that the balance of interest factors show that the exercise of jurisdiction would be unreasonable." *Pervasive Software,* 688 F.3d at 221-22 (citations omitted).

Specific jurisdiction is proper over a nonresident defendant when the cause of action arises out of or relates to the defendant's contacts with the forum, as long as the contact resulted from the defendant's purposeful conduct and not the unilateral activity of the plaintiff or others.

World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297-98 (1980). For specific jurisdiction to exist, the plaintiff's cause of action must arise out of or relate to the defendant's activities "purposefully directed" at the forum state and must result from alleged injuries that "arise out of or relate to" those activities. *Helicopteros Nacionales de Columbia,* 466 U.S. at 414.

There is no factual basis to support the exercise of specific personal jurisdiction over nonresident, DSR. This dispute arises out of marine painting services that were to be provided by Delta in connection with a barge construction project at DSR's facility in Erie, Pennsylvania. As expressly acknowledged in Plaintiff's Complaint, these services were "supplied and performed at the Erie Shipyard." (Complaint, at para. 6). Throughout the duration of this project, Delta maintained temporary residences for its employees in Erie, Pennsylvania. **Exhibit A**. Delta also engaged temporary workers through a local Pennsylvania labor agency for this project. *Id.* Additionally, Delta purchased supplies and rented equipment utilized for this project in Erie and stored its equipment and supplies at DSR's facility. *Id.*

In its effort to shoehorn this case into an improper forum, Plaintiff's Complaint relies upon a single, baseless assertion that "negotiations and/or execution of this contract took place in the State of Louisiana, specifically in Belle Chasse and/or New Orleans Louisiana." (Complaint, at 3). This allegation is false, belied by the factual record, and otherwise denied.

First, there is no written contract between DSR and Delta for the services that are the subject of this action. All work performed by Delta on this project was pursuant to DSR's standard purchase order; a purchase order created and issued by DSR in Erie, Pennsylvania. **Exhibit A**. No one from DSR ever participated in negotiations or executed any contract with Delta prior to commencement of Delta's work on this project while in the State of Louisiana. In fact, as Plaintiff well knows, the only in-person meetings/discussions between DSR and Delta related to the negotiations or management of the project took place at DSR's facility in Erie, Pennsylvania. *Id.*

While Plaintiff's Complaint is conspicuously vague on this point, to the extent that Plaintiff seeks to establish minimum contacts based upon email exchanges and/or telephone calls between the parties – as somehow constituting "negotiations and/or execution of [a] contract in Louisiana" – relevant Fifth Circuit authority clearly forecloses any such position. *Hydrokinetic, Inc. v. Alaska Mechanical, Inc.*, 700 F.2d 1026, 1028-29 (5th Cir. 1983) (holding that "extensive communications" between the parties in Texas, and the attendance of the foreign defendant's inspectors at plaintiff's facilities in Texas to resolve contractual disputes were insufficient to establish personal jurisdiction); *Sciortino, SR. v. CMG Capital Mgmt. Group, Inc.,* 2016 U.S. Dist. LEXIS 124710 (E.D. La Sept. 14, 2016) (holding that contractual negotiations via email and telephone are insufficient to establish minimum contacts for specific jurisdiction); *see also Patterson v. Dietze, Inc.*, 764 F.2d 1145, 1147 (5th Cir. 1985).

The Fifth Circuit has consistently held that even where there exists a contract between the parties – which does not exist here – a contract with an out-of-state party is insufficient to establish minimum contacts in the other party's home forum. *Pervasive Software,* 688 F.3d at 227. "Merely contracting with a resident of Louisiana is not enough to establish minimum contacts." *Moncrief Oil Intern. Inc. v. OAO Gazprom,* 481 F.3d 309, 312 (5th Cir. 2007); *see also Sciortino,* 2016 U.S. Dist. LEXIS 124710 at *16-17.

Additionally, within this Circuit, courts undertaking the minimum contact analysis in breach of contract cases have consistently held that it is the place of performance, not the place of contract negotiations or formation, that is dispositive of the minimum contacts determination.

Jones v. Petty-Ray Geophysical, Geosource, Inc., 954 F.2d 1061, 1068 (5th Cir. 1992) (stating that "[i]n contract cases, this Court has consistently looked to the place of contractual performance to determine whether the making of a contract with a Texas resident is sufficiently purposeful to satisfy minimum contacts"); *Dickson Marine v. Panalina, Inc.*, 961 F. Supp. 947, 951 (E.D. La. 1997) (stating that "in contract cases, this Court must look to the place of performance to determine whether the making of a contract is enough to satisfy minimum contacts").

For example, in *Sciortino*, Judge Feldman granted a plaintiff's 12(b)(2) motion to dismiss in a case with facts far less compelling than maintaining jurisdiction here. *Sciortino*, 2016 U.S. Dist. LEXIS 124710, at *20. In *Sciortino,* defendant financial management company CMG sought dismissal based upon lack of personal jurisdiction in an action brought by a former employee for breach of contract. *Id.* at *4-5. CMG was authorized to operate in all 50 states and maintained its headquarters and principal place of business in Pennsylvania. *Id.* at *1-2. Plaintiff was a resident of Louisiana during his employment, during his recruitment, and during contract negotiations leading to his employment with CMG. *Id.* at *12. Plaintiff alleged that the terms of his employment agreement were negotiated while he was in Louisiana and that the majority of his work was to be performed in Louisiana. *Id.* *2, *12.

In its minimum contact analysis in support of dismissal, the court found the following dispositive: 1) CMG neither maintained an office nor owned property in Louisiana, 2) no CMG employee ever traveled to Louisiana before or during plaintiff's employment in connection with Plaintiff's employment agreement, 3) the employment agreement was negotiated in Pennsylvania and by phone and email while plaintiff was in Louisiana and CMG was in Pennsylvania, and 4) plaintiff performed work in both Louisiana and Pennsylvania. *Id.* at *16-17. Based upon these findings, the court summarily granted 12(b)(2) dismissal, concluding that "the assertion of specific personal jurisdiction over CMG in Louisiana would offend due process" as "there [was] no evidence or suggestion that defendant CMG purposefully availed itself of the privilege of conducting business in Louisiana, invoking the benefits and protections of its laws." *Id.* at *20.

The facts in the present case are far more compelling in support of dismissal. Like defendant CMG, DSR has never maintained an office nor owned property in Louisiana. **Exhibit A**. No DSR representative conducted contract negotiations or executed any contract or agreements within the State of Louisiana as alleged by Delta. *Id.* Unlike *Sciortino*, there is no written contract between DSR and Delta, and the only in-person meetings/discussions preparatory to Delta's work on this project were at DSR's facility in Erie, Pennsylvania, not in Louisiana. *Id.* And again, unlike *Sciortino*, plaintiff Delta concedes, as it must, that all of its work in connection with this project took place exclusively in Erie, Pennsylvania. (Complaint, at para. 6).

Accordingly, this Honorable Court also lacks specific personal jurisdiction over DSR.

II. This Case Should Be Dismissed Because Venue is Improper

Even if this Court finds that it has personal jurisdiction over DSR, this case should be dismissed because venue is improper.

The general rules for venue are found in 28 U.S.C. § 1391, which provides a civil action may be brought in:

> (1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located;
>
> (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; or
>
> (3) if there is no district in which an action may otherwise be brought as provided in this

section, any judicial district in which any defendant is subject to the court's personal jurisdiction with respect to such action. 28 U.S.C. § 1391(b).

Here, the sole named defendant is DSR, a New Jersey limited liability company, and none of its members are Louisiana residents. **Exhibit A**. Plaintiff has not, and cannot show that, "the events or omissions giving rise to the claim occurred" in Louisiana. As fully briefed herein, the events and any and all omissions could only have occurred at DSR's facility in Erie, Pennsylvania, where the work was performed. Finally, there is a district in which this action may have been brought, namely, the Western District of Pennsylvania. Therefore, venue is improper under 28 U.S.C. § 1391 and this case should be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(3).[1]

III. In the Alternative, This Honorable Court Should Transfer Venue to the U.S. District Court for the western District of pennsylvania

Alternatively, should this Court determine that venue is proper, this Court should transfer the case to the U.S. District Court for the Western District of Pennsylvania. 28 U.S.C. § l404(a) "provides that for the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." *Id.* The movant bears the burden of demonstrating that change of venue under § 1404(a) is warranted by showing that the balance of convenience and justice weighs in favor of a transfer of venue. *See In re Volkswagen of Am., Inc.,* 545 F.3d 304, 315 (5th Cir. 2008). The decision to transfer a case is committed to the district court's sound discretion. *Id.*

"Section 1404(a) is intended to place discretion in the district court to adjudicate motions

[1] Alternatively, this case should be transferred to the Western District of Pennsylvania, pursuant to 28 U.S.C. § 1406 which provides that: "[t]he district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought. *Id.*

for transfer according to an 'individualized, case-by-case consideration of convenience and fairness.' A motion to transfer under § 1404(a) thus calls on the district court to weigh in the balance a number of case-specific factors." *Stewart Org., Inc. v. Ricoh Corp.,* 487 U.S. 22, 29 (1988) (quoting *Van Dusen v. Barrack*, 376 U.S. 612, 622 (1964)).

The district judge has broad discretion in transferring venue if the movant demonstrates that a transfer is "[f]or the convenience of parties and witnesses, in the interest of justice." *In re Volkswagen of Am., Inc.*, 545 F.3d at 315 . The Fifth Circuit has adopted the private and public interest factors first enunciated in *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501 (1947), as appropriate for the determination of whether a venue transfer meets the statutory requirements under § 1404(a). *Id; see also The Laitram Corp. v. Hewlett-Packard Co.*, 120 F. Supp. 2d 607 (E.D. La. 2000).

The private interest factors are: (1) the plaintiff's choice of forum, (2) the situs of material events, (3) the convenience of the witnesses, including the court's power to compel the appearance of unwilling witnesses at trial and the costs of obtaining the attendance of witnesses, (4) the convenience of the parties, specifically, their respective residences and abilities to bear the expense of trial in a particular forum, and (5) all other factors relating to the expeditious and efficient adjudication of the dispute. *Id*. The public interest factors are: (1) the administrative difficulties flowing from court congestion, (2) the local interest in having localized interests decided at home, (3) the familiarity of the forum with the law that will govern the case, and (4) the unfairness of burdening citizens in an unrelated forum with jury duty. *Id*.

As explained below, the relevant factors weigh in favor of transfer. First, the Western District of Pennsylvania is an appropriate forum for this case. Second, it is significantly more convenient for substantially all of the non-party and party witnesses, most of whom are located in or near Erie, Pennsylvania. Third, substantially all of the relevant records and documents are similarly located and maintained at DSR's facility in Erie, Pennsylvania. In contrast, there is nothing that connects this case to the Eastern District of Louisiana other than Plaintiff's presence in this State.

1. Plaintiff's Choice of Forum Should Be Afforded Little to No Deference.

Delta's decision to file this action in the Eastern District of Louisiana is not entitled to substantial deference because this matter has no meaningful ties to the State of Louisiana. Courts in this district have recognized that "less than the customary degree of deference to the plaintiff's forum selection [is appropriate] when [as here] the operative facts of the dispute occur outside plaintiff's chosen forum, and no factor weighs in favor of retaining the suit in the chosen forum." *Roulston v. Yazoo River Towing, Inc.,* 2004 U.S. Dist. LEXIS 14388 at *5-6 (E.D. La. 2004); *see also Laitram Corp.,* 120 F. Supp. 2d at 609. As noted by the court in *Florida Marine Transporters, Inc. v. Lawson & Lawson Towing Co. Inc.*, 2001 U.S. Dist. LEXIS 14312 (E.D. La. Aug. 29, 2001), "a fundamental principle guiding the Court's 1404(a) transfer analysis is that litigation should proceed in the place where the case finds its center of gravity." *Id.* at *14-15 (citing *Laitram Corp.*, 120 F. Supp. 2d at 609).

In *Florida Marine Transporters*, Plaintiff filed suit against Lawson arising out of an incident in Missouri. *Id.* at *1-2. Confronted with a motion to transfer pursuant to 28 U.S.C. § 1404(a), Florida Marine argued that deference should be afforded to its choice of forum because the suit was between Louisiana parties, namely a "Louisiana citizen and another doing business in Louisiana." *Id.* at *5. Despite both parties having a significant connection to Louisiana, Judge Barbier granted defendant's motion to transfer, finding that the case's "center of gravity" was in the Eastern District of Missouri, where the incident occurred, and that the witnesses, evidence and proof were closer to St. Louis than to New Orleans. *Id.* at *13-14. The court expressly held that the connections to Louisiana were insufficient to avoid transfer to Missouri. *Id.* at *14.

Here, the connection to Louisiana is even more tenuous. The only link between this forum and the pending case is that plaintiff Delta is authorized to conduct and allegedly conducts business in this State. (Complaint, at para. 1). It is undisputed that the entirety of the services provided by Delta were supplied and performed at DSR's facility in Erie, Pennsylvania. Further, there is no written contract between the parties, no contractual negotiations prepatory to Delta's work on this project were conducted in Louisiana, and no one from DSR ever came to Louisiana for these purposes. **Exhibit A**.

2. The Situs of Material Events is Erie, Pennsylvania, not Louisiana.

As detailed above, this breach of contact action arises exclusively from services provided by Delta in Erie, Pennsylvania. All of the material events underpinning plaintiff's breach of contract action and DSR's defense will arise exclusively out of the services Delta provided, or failed to provide, during its work in Pennsylvania. Accordingly, this private interest factor clearly supports transfer.

3. The Convenience of the Parties and Witnesses Strongly Supports Transfer.

The Western District of Pennsylvania is a substantially more convenient location for most of the non-party and party witnesses. The categories of witnesses who would likely be called to testify at trial include:

- DSR supervisors and managers who were engaged in daily oversight of the work performed by Delta;
- DSR managers and employees who maintain records related to the project and Delta's

services and performance;

● DSR management that corresponded with and met with Delta supervisors and/or employees, at DSR's facility in Erie, Pennsylvania regarding Delta's services during the project, to include deficiencies and other performance/quality issues;

● Employees of third party inspection companies engaged to inspect work on the project, to include services performed by Delta, residing in or near Erie, Pennsylvania.

The majority of the anticipated witnesses will therefore be current employees of DSR, located in Erie, Pennsylvania. Maintaining this action in New Orleans would be extremely burdensome, requiring numerous key employees and management personnel to fly approximately 1000 miles across the country repeatedly, in order to testify during various phases of the litigation. Thus, this factor strongly supports transfer.

4. The Ease of Access to Sources of Proof Weighs in Favor of Transfer.

Ease of access to relevant evidence also supports transfer of this case. DSR is located in Erie, Pennsylvania, and many of the original records and information related to this dispute are located in Erie, as are the witnesses who can authenticate and explain them. This project involved the construction and fitting out of a commercial chemical barge, a project that was ongoing for a number of years, and in which Delta was engaged for a period of about 16 months. During this time there developed a substantial body of records related to the overall project to include the services performed by Delta at DSR, and all of these records are maintained at DSR's facility in Erie, Pennsylvania. This factor thus militates in favor of transfer.

5. Administrative Difficulties Arising from Court Congestion Weigh in Favor of Transfer to the Western District of Pennsylvania

The first public interest factor, which compares the congestion of the proposed venues, also weighs slightly in favor of transfer. Federal court management statistics indicate that the

Western District of Pennsylvania has a somewhat shorter length of time from filing to disposition for civil cases than this District (6.2 months compared to 7.8 months). *See* Federal Court Management Statistics 2016, available at http://www.uscourts.gov/statistics/table/na/federal-court-management-statistics/2016/09/30.

Accordingly, this factor weighs in favor of transfer.

6. The Local Interest in Deciding Local Controversies at Home Weighs in Favor of Transfer

The local interest factor weighs in favor of transfer here because virtually all of the facts that will be at issue in this case relate to the services provided by Delta at DSR's facility in Erie, Pennsylvania. And, as noted above, the substantial body of evidence underpinning these facts is located and maintained at the same location in Pennsylvania. Thus, the local interest factor supports transfer.

7. The Third and Fourth Public Interest Factors are Neutral

The Court's familiarity with the governing law and the burden on citizens in an unrelated forum are neutral factors in this transfer analysis.

In summary, the relevant private interest and public interest factors this Court must consider in ruling on a transfer motion pursuant to Section 1404(a) weigh heavily in favor of transfer to the Western District of Pennsylvania. That District is the location where 1) all of the events giving rise to this case occurred, 2) almost all of the potential non-party and party witnesses are located, 3) almost all of the relevant evidence is located, and 4) the quickest resolution of this action will likely occur.

CONCLUSION

For the foregoing reasons, Defendant DSR prays that its Motion to Dismiss for Lack of Personal Jurisdiction and Motion to Dismiss for Improper Venue be granted. In the alternative, DSR prays that its Motion to Transfer Venue to the U.S. District Court for the Western District of Pennsylvania be granted.

Respectfully submitted,

/s/ H. Jake Rodriguez

ANTONIO J. RODRIGUEZ (#11375)
H. JAKE RODRIGUEZ, T.A. (#27867)
ASHLEY E. BANE (#35640)
Fowler Rodriguez
400 Poydras Street, 30th Floor
New Orleans, Louisiana 70130
Telephone: (504) 523-2600
Facsimile: (504) 523-2705

Counsel for Defendant, Donjon Shipbuilding and Repair, LLC

CERTIFICATE OF SERVICE

I hereby certify that I have served on this 13th day of February, 2017, filed the foregoing pleadings on the Clerk of Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

/s/ H. Jake Rodriguez